

NTSB Order No. EA-4231

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of August, 1994

Docket 194-EAJA-SE-13163

On May 17, 1994, the law judge served a written decision dismissing the applicant's application for an Equal Access to Justice Act award for his failure to submit the documentation necessary for determining his eligibility for an award.¹ On June 15, 1994, the applicant filed with the law judge a motion for reconsideration of that denial, urging acceptance of the admittedly untimely net worth statement attached to the motion. In an order noting his lack of authority to consider the reconsideration request,² but suggesting that the motion, opposed

²The motion for reconsideration was filed after the May 17 order had become a final order of the Board under Section 821.43

by the Administrator, could be treated as an appeal to the full Board from his May 17 order, the law judge has referred the motion to the Board for disposition.

Even if we were to treat the June 15 motion for reconsideration as a notice of appeal to the Board, it could not be entertained unless good cause existed to excuse the applicant's failure to file it within 10 days after the law judge's May 17 dismissal order, as required by Section 821.47 of the Board's Rules of Practice.³ See Administrator v. Hooper, 6 NTSB 559 (1988). However, while counsel for applicant attempted to explain, in his motion for reconsideration, why he had not furnished the net worth statement before the law judge dismissed the application on May 17, no explanation appears which would justify the subsequent failure to respond to that order on or before May 27.

ACCORDINGLY, IT IS ORDERED THAT:

The applicant's motion for reconsideration is hereby dismissed as an untimely notice of appeal from the law judge's May 17, 1994 order.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board concurred in the above order.

(..continued)
of the Board's Rules of Practice, 49 CFR Part 821.

³Section 821.47 provides as follows:

§ 821.47 Notice of Appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served.

We note, in this connection, that attached to the law judge's May 17 order was information on how and when to appeal that decision to the Board.